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STATEMENT OF CONGRESSMAN ED CASE OF HAWAII MAY 16, 2005

INTRODUCTION OF THE NORTHWESTERN HAWAIIAN ISLANDS NATIONAL MARINE REFUGE ACT OF 2005

Mr. Speaker, I rise today to introduce a truly novel and revolutionary proposal to create the largest marine protected area in our world. I offer for this Congress' consideration and prompt action the Northwestern Hawaiian Islands National Marine Refuge Act of 2005, which would provide the maximum level of permanent protection for a magnificent marine system and international treasure, larger even than Australia's Great Barrier Reef Marine Protected Area. In so doing, my proposal would do for our country's, and world's, oceans what another then-novel and revolutionary action—our 1872 set-aside of what later became the foundation of our National Park System, Yellowstone National Park—did for permanent protection of our treasured and endangered terrestrial ecosystems.

This "Ocean Yellowstone" lives and breathes in the waters of our country surrounding the Northwestern Hawaiian Islands (NWHI), an equally magnificent chain of islands starting at Nihoa Island lying just northwest of the main Hawaiian Islands and stretching fully 1,200 miles northwest across the Pacific to Kure Atoll. In these waters and among their reefs, banks, and seamounts, and existing as an integrated ecosystem with their terrestrial neighbors, lie some 70 percent of our nation's coral reefs.

This remote and incredibly diverse ecosystem is also home to some 7,000 species, at least one-quarter of which (some scientists say as much as

half) are endemic to this area and found nowhere else on earth. It also serves as a pu'uhonua (place of refuge) to many species of coral, fish, birds, and marine mammals, including the highly endangered Hawaiian monk seal, threatened green sea turtle, and the endangered leatherback, loggerhead, and hawksbill sea turtles. An estimated 14 million seabirds thrive in these islands and their waters, including 99 percent of the world's Laysan albatrosses and 98 percent of the black-footed albatross population. This also may be the last predator-dominated marine ecosystem left on the planet—some 55 percent of the total fish biomass is made up of predator species, the natural way of our oceans.

Yet this incredible remnant of a purer world will not survive absent affirmative protective action, for by its isolation it is a fragile world, one where the most seemingly insignificant and benign human interaction can have the most magnified effect. As a prime example, the islands and waters of the NWHI have developed a unique ecosystem whose isolation at one time provided protection from invasive species. Yet today some invasives have become established due not only to marine debris from the Northern Pacific but from fishing, transiting, and other vessels. And commercial fishing and other human interaction is itself inherently invasive, as is evident in the introduction of rats (now eliminated) and the consequences of overfishing, leading the near-extinction of the black-lipped

pearl oyster and other species and, more recently, the crash of the lobster fishery. Just last February, as another example, our Marine Mammal Commission reported that the world's dwindling Hawaiian monk seal population of an estimated 1,400, based in the NWHI, has "no tolerance for additional mortality associated with fisheries or other human activities."

Jurisdiction of the NWHI and waters has been shared by our federal and Hawai'i state governments. As an overall template, the islands themselves (with the exception of Midway Island, an unassociated federal possession) are part of the State of Hawai'i (and my Second Congressional District) along with the waters around those islands out to the three-mile limit. Beyond three miles and out to the fifty-mile boundary is the current Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), established by President Clinton and under the jurisdiction of the National Ocean Service (NOS) within the Department of Commerce's National Oceanographic and Atmospheric Administration. The waters beyond the Reserve out to the extent of our country's 200-mile exclusive economic zone are also administered by the Department of Commerce in non-reserve status. Midway and its waters out twelve miles constitute the Midway Atoll National Wildlife Refuge, established in 1988 and administered by the Department of the Interior's U.S. Fish and Wildlife Service (FWS). With the exception of Midway, the islands of the NWHI and certain offshore waters, including some Hawai'i waters and some Reserve waters (except for waters off Kure Atoll), also constitute the Hawaiian Islands National Wildlife Refuge, originally established as a bird reservation by President Theodore Roosevelt in 1909 and now under joint FWS-Hawai'i management.

On the face of it, if one's end-goal is, as is mine, to provide the highest level of permanent protection to the total ecosystem of the NWHI and waters, this structure can work and is, in most cases, working. The FWS is managing its jurisdiction within the Midway Atoll and the Hawaiian Islands National Wildlife Refuges toward the goal of full protection and preservation under longstanding and well-established federal man-

dates and mechanisms.

And just last Friday, May 13th, the State of Hawai'i's Board of Land and Natural Resources, responsible for the administration of all state lands and waters, voted to establish throughout Hawai'i's NWHI waters the Northwestern Hawaiian Islands Marine Refuge, together with rules prohibiting commercial or recreational fishing within refuge waters. The Board's action followed a public input process which yielded some 110,000 comments supporting the most stringent protections. As Peter Young, Chair of the Board, said at the time: "We are dealing with a special place, and it's different." For this action, Chair Young and the Board deserve our lasting gratitude.

To complete now this penumbra of protection and truly discharge our responsibility of stewardship, we must turn our attention primarily to the Reserve. Following its establishment, subsequent legislation mandated that the Reserve be converted to a National Marine Sanctuary. Public scoping meetings began in 2002, and the National Marine Sanctuary Program published "Advice and Recommendations on Development of Draft Fishing Regulations" in September 2004.

Essentially, in an effort to forge compromise between the interests of fishermen who operate in the Reserve, the desire of the Western Pacific Fishery Management Council (WESPAC) to retain control over the Reserve, the opinion of scientists and conservationists that the area remains vulnerable, and the overwhelming sentiment of the people of Hawai'i for protection, the Program proposed a management plan that would allow current fishing to continue and keep WESPAC involved in Reserve fishery management. WESPAC, however, subsequently proposed alternative Reserve regulations that would expand current fishing, open a fishery for precious corals, and provide only a temporary closing of the lobster fishery. Final Program Reserve regulations are pending.

This is an opportune, in fact optimum, time, before the Program acts any further, for us all to

first stop, look, and listen, and second move to a whole different beat. And in doing so we must first ask this basic question: shouldn't there be some special places in our marine world which are in fact true reserves—truly off-limits, where our marine species can live and thrive in their natural state, without the invasive, extractive hand of humankind? I know in my heart that the answer is yes, and that the Northwestern Hawaiian Islands and their waters are where we should just do it.

The challenge, however, is that we simply do not have an existing federal marine statutory and regulatory regime that encompasses this goal. We do have a National Marine Sanctuary Program run by good people with good intentions, administering a number of national marine sanctuaries. But the basic statutory and regulatory authority under which the Program operates and the sanctuaries are administered requires a balancing of sometimes-competing uses, including extractive uses, which is why some form of extractive use, fostered by fisheries management councils such as WESPAC, is allowed in all of our nation's national marine sanctuaries. There is simply not the regime in place to create what truly would be a sanctuary in the literal sense of the word, to forge a world such as my State of Hawai'i just proudly did in creation in its waters of the Northwestern Hawaiian Islands Marine Refuge.

My Northwestern Hawaiian Islands National Marine Refuge Act of 2005 would do just that: establish the public policy of this country that there should exist in the waters of the Northwestern Hawaiian Islands one place that is truly a refuge for our marine world. This refuge would extend seaward from the boundary of the federal national wildlife refuges—with concurrent jurisdiction over those portions also within Hawaii's Northwestern Hawaiian Islands Marine Refuge—out fifty miles to the boundaries of the current federal Reserve, except that the boundary would be further out past Kure Atoll to encompass newly-identified precious coral beds and monk seal foraging areas. The total area of this precious refuge would be approximately 137,000 square miles, eclipsing Australia's Great Barrier

Reef Marine Protected Area of 135,000 square miles.

Under my bill, the Refuge would continue to be managed by NOS through a new Office of National Marine Sanctuaries and Refuges. This is consistent with NOAA's longstanding desire to elevate the current National Marine Sanctuary Program to full office level, and it provides NOS with a management option for marine resources in need of a higher level of protection than that currently provided under the Program. And that office, in managing the Refuge (in consultation with an advisory council including representatives from the State of Hawai'i and the Native Hawaiian, scientific, and marine conservation communities), would be statutorily charged with implementing Congress's purpose "that the preservation of biodiversity and the protection and conservation of the natural resources and cultural heritage of [the Refuge] shall be the exclusive basis for all associated decisions by Federal agencies."

Passage through and activities in the Refuge would be by permit only. Permitted activities would include scientific research and other uses consistent with the purpose of the Refuge. These uses would not include commercial fishing or other extractive practices except in very narrow circumstances. As there are some existing commercial fishing permit holders, my bill provides a mechanism to buy out these permits at fair value.

It is vital to note that this bill is grounded solidly in the cultural heritage and traditions of the indigenous peoples of Hawai'i, our Native Hawaiians. Their respect for the `aina—our natural world in all its manifestations—in their practice of environmental protection and sustainability, was not just a profoundly spiritual belief but a basic survival strategy. So it is no surprise that one of the principal groups working toward just such a Refuge is Kahea: the Hawaiian Environmental Alliance, dedicated to bringing to our modern world this pu`uhonua for the rare and precious species of the NWHI. And in that same spirit my bill provides, as does Hawai'i's newly-proposed Northwestern Hawaiian Islands Marine Refuge, for continued traditional use of the Ref-

uge by Native Hawaiians for religious, cultural, and sustenance purposes.

Here is a quick overview of my proposed Northwestern Hawaiian Islands National Marine Refuge Act of 2005:

Section 1: Entitles the act.

Section 2: Outlines Congress's findings, including the finding that the ``waters of the NWHI must be set aside as a fully protected national marine refuge to preserve in perpetuity their unique and fragile ecosystems, habitats, and communities of flora and fauna, as well as areas of traditional Hawaiian cultural significance. ``

Section 3: Sets forth the purposes and policies of the Act, including the provision that ``all human activities in the [Refuge] shall be limited to those entirely consistent with preservation and protections in the true nature of a full protected refuge, and that all commercial use of such refuge shall be prohibited."

Section 4: Provides Act definitions, including Refuge boundaries and cooperative management between federal and Hawai'i agencies.

Section 5: Designates the Refuge.

Section 6: Provides for management of the Refuge by NOS through the new Office of National Marine Sanctuaries and Refuges in cooperation with the State of Hawai'i through memoranda of agreement and in consultation with an advisory council.

Section 7: Provides for vessel presence in the Refuge by permit only; outlines prohibited activities; provides compensation for current permit holders.

Section 8: Provides for enforcement and penalties.

Section 9: Provides for liability and other legal consequences.

Section 10: Repeals prior inconsistent laws.

Section 11: Requires issuance of implementing regulations within six months of enactment.

Mr. Speaker, I confess to speaking on this floor today with a mix of excitement and awe. Excitement at continuing a journey to a next, higher level that is not only novel and revolutionary, but so right. And awe at the responsibility and opportunity we all have to truly preserve and protect one of the most incredible places on this

world. I hope and believe that we can all come together to harness the collective aloha of so many for this place, and promptly pass the Northwestern Hawaiian Islands National Marine Refuge Act of 2005.

Mahalo, and aloha!